

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MICHIGAN

IN RE:

CHERRY GROWERS, INC.,

Debtor.

Case No. 17-04127-swd

Chapter 11

Honorable Scott W. Dales

Creditor Farm Fresh First, LLC's SECOND Notice of Objection to Fee Statements

Pursuant to the Court's November 14, 2017 Order Establishing Procedures for Interim Compensation, Creditor Farm Fresh First, LLC objects to the following particular interim compensation statements and requests:

1. Dunn, Schouten & Snoap, P.C. January 24, 2018 – \$20,448.64 (“Balance to be paid now” \$100,524.25, “Amount Due Now” \$67,949.25);
2. Kuhn Rogers PLC January 19, 2018 – \$2,520 (“Balance to be paid now” \$2,016);
and
3. Honigman Miller Schwartz and Cohn LLP January 19, 2018 – \$5,478.75.

The particulars of Farm Fresh's objection follow.

1. The Debtor cannot afford the fees. The Debtor's most recent financial reports, filed on January 17, 2018, reflect a net operating loss from the prior month of \$82,197, and a total loss since filing of \$206,278 (losing ground from the prior month's report when the amount was a NOL of \$168,044). Payment of the requested professional fees will only worsen the Debtor's existing administrative/secondary insolvency. The breadth and amounts of billing by various professionals is also of concern. Although rates are within those preliminarily approved by the Court, the

statements reflect:

- * Dunn, Schouten – Attorney Schouten, 54.5 at **\$325/hr**; Attorney Pastula, 30.1 at **\$250/hr**;
- * Kuhn Rogers – All at **\$225/hr**, Attorneys Quandt (1.3 hours); Donahue (8.4); Boyd (1.5);
- * Honigman – Attorneys Sable, 2.6 at **\$510/hr**; Kitei, 7.95 at **\$465/hr**; **Paralegal** Lundberg, 1.9 at **\$240/hr**.

In sum, the Debtor is being asked to bear the billings of 7 attorneys and one paralegal (whose rate is higher than all of the Kuhn Rogers attorneys), while it is unable to make a profit without paying any of them, or its unsecured creditors. This is simply not feasible.

2. Additional issues. The billing statements of both Dunn Schouten and Kuhn Rogers reflect time spent on PACA research and issues. Although some effort is expected to set up the PACA claim procedure, it is not apparent that anything has actually been accomplished in that regard. As with the last billing statements, the efforts put into review and defense of Farm Fresh's separate lawsuit against the Debtor's officers and directors (see, e.g., Dunn Schouten entries on 12-7, 12-8, 12-11, possibly 12-5; Kuhn Rogers entries on 12-5, 12-7, and 12-21) have nothing to do with this bankruptcy and this work does not benefit the estate at all. Billing to the estate for this work inexplicably continues despite Farm Fresh's objection to it last month. It also appears from the bills that other PACA entries may also relate to this separate lawsuit, but it is impossible to tell for sure.

As previously noted, the Debtor has an awful lot of attorneys – and their bills reflect a significant amount of time conferring amongst themselves.

Finally, although Farm Fresh understands and respects the Court's prior ruling on the Debtor's cash collateral motion, Farm Fresh, to protect the record, renews its objection to the use of statutory PACA trust property to pay the Debtor's professionals.

Dated: January 31, 2018

MOOTHART & SARAFA, PLC

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